North Dakota Office of State Tax Commissioner

Property Tax Newsletter

News and developments

A publication of the Property Tax Division

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Tax Commissioner

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Property Tax Relief

The 2007 property tax statements were mailed to property owners in December. In most North Dakota locations, the 2007 market values for residential, commercial, and agricultural property held steady or increased. Valuations for property tax purposes generally increased also for 2007. Although many taxing districts reduced their mill levies, property taxes typically held steady or increased slightly.

Inside this issue:

The 2007 North Dakota Legislature offered property tax relief for owners of residential, agricultural, and commercial property. The method of providing the property tax relief is an income tax credit based on the property taxes paid for each category of property – residential, agricultural, and commercial property. There are two property tax credits: one for residential and agricultural property combined; one for commercial property. It is possible for a taxpayer to qualify for both credits. The credits are claimed on the 2007 and 2008 North Dakota income tax returns.

To qualify for the credit, owners of residential property and/or agricultural property must have their primary residence located in North Dakota. Owners of commercial property located in North Dakota must have a requirement to file a North Dakota income tax return. Property taxes for which credit is claimed must be paid in full.

Owners of residential property and agricultural land may claim a credit on their 2007 income tax returns, equal to 10 percent of the amount of consolidated property tax shown on the 2006 real estate tax statement. The amount of the credit is based on property tax before any discount. Special assessments are not included when calculating the credit. Owners of mobile homes may claim a credit for 2007 based on the 2007 mobile home tax paid.

The maximum credit allowed is based on income tax filing status as follows:

$ 500 single, head of household, qualifying widow(er), or married filing separately

$1,000 married filing jointly

The combined amount of the residential property credit and agricultural property credit may not exceed $500 per return (or $1,000 per return, if married filing jointly). The commercial property tax relief credit is in addition to the residential and agricultural property tax credits. It is possible for a taxpayer to qualify for both the residential/agricultural credit and the commercial property tax credit.

On the 2007 income tax return, the credit for owners of residential, commercial, and agricultural property is calculated based on the 2006 real estate tax (or the 2007 mobile home tax statement). On the 2008 income tax return, the credit is calculated in the same way as for 2007, but it is based on the residential property taxes shown on the 2007 real estate tax statement (or 2008 mobile home tax statement).

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If the amount of credit exceeds the income tax liability, individuals may claim the unused credit on the next year's tax return or request a property tax relief certificate for the amount of the unused credit. The taxpayer will redeem the certificate at the county treasurer's office. Individuals who own residential or agricultural property but don't have a North Dakota state income tax liability can still receive the property tax relief. Those individuals will file a special new form, called Form ND-3 with the North Dakota Tax Commissioner's Office to receive the property tax relief certificate. Those taxpayers will redeem the certificate at the county treasurer's office.

For more information about the property tax relief,

- visit the Tax Department's web site at www.nd.gov/tax/property/taxrelief
- email the Tax Department at propertytaxrelief@nd.gov
- call the Tax Department on a special Property Tax Relief phone number 701.328.2760 or 877.328.2760.

Information is also available from income tax preparers and county treasurers.

Clarifications Regarding the Veteran's Exemption

Applicants are responsible for providing assessment officials with the proper evidence to support their claim for exemption.

Property Tax Division personnel have responded to several questions regarding the exemption available to qualifying disabled veterans. North Dakota Century Code § 57-02-08(20)(b) provides that applicants must be disabled veterans of the U.S. armed forces, discharged under honorable conditions or retired from the armed forces with a service-connected disability of 50 percent or greater. The unremarried surviving spouse of the disabled veteran is also eligible for the exemption.

Applicants are responsible for providing assessment officials with the proper evidence to support their claim for exemption. Assessment officials should examine the information closely. Information from the United States Veterans Affairs (V.A.) should certify that the veteran was discharged under honorable conditions or has been retired from the armed forces with service-connected disability of 50 percent or greater. Some information provided by the V.A. lists disabilities that were not acquired during active military service. The surviving spouse must provide evidence that the veteran is deceased and that the spouse has not remarried. The veteran did not need to qualify for the exemption at the time of his or her death in order for the unremarried spouse to qualify for the exemption.

There may be situations where the V.A. statement indicates that the veteran is compensated at a different percentage than the combined evaluation percentage. The U.S. Department of Veterans Affairs does not use the term "certified rated service-connected disability." If this occurs, the Tax Department recommends assessment officials use either:

1. the combined evaluation percentage, or
2. the percentage at which the veteran is being compensated, whichever is greater, as the basis for determining the percentage of exemption.

There are no income limitations for individuals applying for the exemption for 2007 and thereafter. Individuals who file an application for abatement for 2006 have different qualification requirements under the old law.

Once an application has been filed according to the 2007 provisions, the exemption is automatically renewed each year. The disabled veteran or the unremarried surviving spouse must reapply if one of the following occurs:

- Veteran receives a change in certified rated service-connected disability
- Veteran dies
- Veteran or the unremarried surviving spouse sells the property
- Residence is no longer the primary place of residency

The State of North Dakota does not reimburse counties for tax revenue lost because of the disabled veterans' property tax exemption or for any other property tax exemption. Counties are reimbursed only for homestead credit applications allowed according to N.D.C.C. § 57-02-08.1. A county board of commissioners may, by resolution, disallow the exemption for the taxable year.

If assessment officials have concerns regarding qualifications for the disabled veterans' exemption or any other property tax exemption, contact the Property Tax Division at 701.328.3127.

Assessment Procedures Pertaining to Mobile Homes

County directors of tax equalization (tax directors) are responsible for monitoring mobile home taxation in North Dakota, and certain mobile homes are not subject to taxation. The provisions of N.D.C.C. § 57-55-10 specify which mobile homes are exempt or excluded from taxation.

Mobile home owners who meet one of the provisions of N.D.C.C. § 57-55-10 should file an Application for Property Tax Exemption annually with the county director of tax equalization. The applicant needs to select item # 8 on the application. The applicant must also provide an explanation of the use of the property in the space provided.

Tax directors should monitor the mobile home exemptions and exclusions annually. They may do so by physical inspection, developing annual reports on spreadsheets that contain the necessary information, and by ensuring that applications are filed annually for the exemptions or exclusions.

When mobile homes are located in courts, owners may be allowed to have garages and storage buildings situated on their lots. Many of those outbuildings are permanently attached to the ground. In those situations, the outbuildings become real property and are subject to assessment as real property to the owner of the land. If a municipality (e.g., city) owns the mobile home court, permanently-attached buildings are subject to possessory interest assessment, regardless of the terms or length of the lease.

Homestead Credit Reminders

The 2007 Legislature changed some of the provisions for qualifying for the homeowners' property tax credit and renters' refund programs. Assessment officials should review the property tax guideline titled "Credits for North Dakota Homeowners and Renters," revised July 2007, to ensure use of current statutory provisions. The 2007 legislative changes are indicated on the guideline with an asterisk in front of the number.

One of the requirements for qualification is that the applicant must reside on the property. Item number 23 of the Property Tax Guideline indicates that an applicant who is temporarily absent from the homestead is still eligible for the credit if the homestead awaits the applicant's return and is not rented. Many applicants reside somewhere else for a number of months, and assessment officials have difficulty determining whether the applicant actually resides in the residence in order to qualify for the credit. If assessment officials don't have sufficient facts and the owner doesn't provide the necessary information, the application may be denied. Applicants are responsible for providing proof that the residence claimed is their homestead. Acceptable evidence of residency includes a copy of the most recent North Dakota income tax form, bank statements, and other business correspondence that is mailed to the address claimed as the homestead.

Remember that income information provided on the applications is confidential. Social Security Numbers and Federal Identification Numbers should be protected from viewing by the public. Before making copies of applications or releasing homestead credit information to the public, assessment officials need to ensure that income information and applicants' identification numbers are covered or removed from documents.

When mobile homes are located in courts, owners may be allowed to have garages and storage buildings situated on their lots.

Abatement applications for a homestead credit reduction for tax year 2006 will have different qualification requirements under the old law.

A poster is available on the Tax Commissioner's web site for assessment officials to print and use for advertising the homeowners' property tax credit program. Go to www.nd.gov/tax, Property, and then Publications. The Homestead Credit Poster is listed under PDF Publications.

Possessory Interest Assessment

The definition of real property in N.D.C.C. § 57-02-04 includes land and improvements as well as the rights and privileges involved with ownership of land and improvements. For assessment purposes, real property value generally includes consideration of fee simple ownership. Fee simple ownership rights in property include the right to sell, lease, use, give away, enter, and refuse to do anything. When a lease exists, the property owner gives up some of those rights. The tenant's rights, created by a lease agreement, are referred to as leasehold interests.

Whenever assessment officials become aware of taxable possessory interests, they are required to assess them.

When individuals or entities obtain the right to use property owned by governmental entities such as the U.S., State of North Dakota, cities, counties, townships, etc., or property owned by a railroad corporation, they acquire a possessory interest. Interests and rights pertaining to real property are included in the definition of real property in N.D.C.C. § 57-02-04. Therefore, possessory interests are subject to taxation (N.D.C.C. § 57-02-02), and valued according to the provisions of N.D.C.C. § 57-02-26. Examples of taxable possessory interests include property owned by the U.S. Forest Service, U.S.A. Fish Hatchery, North Dakota Park Service, and school districts, and used by employees as their residences. Another example of taxable possessory interests is use of buildings located along railroad right-of-way by individuals or organizations for commercial or retail businesses.

Whenever assessment officials become aware of taxable possessory interests, they are required to assess them. A separate assessment parcel should be created in the assessment list and on the tax list. For additional information regarding assessment of possessory interests, refer to the article titled "Assessment of Possessory Interests" included in the March 2000 issue of the Property Tax Newsletter. The issue is available on the Tax Department's web site at www.nd.gov/tax. Select Property, then Publications, and scroll down the page to Property Tax Newsletters and select March 2000.

There is no possessory interest assessment made when an individual or organization leases real property from a property owner whose property is subject to tax. For example, Basin Electric Cooperative or Florida Power & Light (FPL) leases property from an individual and erects wind towers on the land. There is no statutory provision to assess a possessory interest assessment to Basin Electric or FPL in such a circumstance. The property is assessable to the lessor (property owner). Any adjustment for taxes due on the leased property is a private matter between the lessor and lessee.

Property Tax Guidelines and Forms

Assessment officials should verify that they are using the most current forms and guidelines. Property tax guidelines have been updated to reflect 2007 legislative changes. The guidelines are available on the Tax Department web site. Go to www.nd.gov/tax. Select Property, Publications, Property Tax Publications, and then Property Tax Guidelines. Individual guidelines are listed and contain the month and year of the last update.

Most property tax forms used by assessment officials are also available on the Tax Department web site. Go to www.nd.gov/tax, Property, and Forms. If a form is not available on-line, assessment officials should check in Section F (forms) of their Property Taxation Manual for the form. If a property tax form is not available in either location, contact the Property Tax Division.

Tax Directors to Monitor Renaissance Zone Exemptions

Many cities in North Dakota have established renaissance zone authorities and granted property tax exemptions to encourage rehabilitation of property located within the designated renaissance zone areas.

North Dakota Century Code § 40-63-11 provides that a taxpayer cannot be delinquent in any state or local taxes to be eligible for the renaissance zone property tax exemption. The North Dakota Commerce Department and zone authority officials are involved in the application and approval process for classification as a renaissance zone project. Assessment officials also need to be involved in the process.

The Office of State Tax Commissioner recommends assessment officials treat the application process for the renaissance zone exemption similarly to that for the new business exemption. For the new business exemption, city and county auditors are required to submit a copy of approved applications to the county tax director and to the North Dakota Tax Commissioner. Even though there is no statute that requires city auditors to provide a copy of approved applications for the renaissance zone exemption, it is helpful for the county director to receive a copy of the certification of renaissance zone exemptions in order to monitor the period of exemption and tax payments.

County directors of tax equalization may want to send a letter to all city auditors informing them of the importance of monitoring the renaissance zone exemption and asking them to submit a copy of all certifications to their office.

Carbon Credit Payments to Farmers are Not Farm Income

The carbon credit program, which began in 2003, allows farmers to receive carbon credits for practicing conservation methods such as no-till or strip-till planting or leaving land as rangeland (untilled). The purpose for doing this is to offset the effect of greenhouse gas emissions produced by large manufacturing plants.

Farmers may sell the carbon credits, also called offsets. Income from the sale of these credits will become taxable income. A question was asked whether income received from the sale of carbon credits is considered farm income and reported on Schedule F for federal income tax purposes, or if the income is considered a short or long term gain (as are other securities), which is considered nonfarm income.

Gains or losses on the sale of commodity futures contracts are considered farm-related income only if the contract was entered into to protect the farmer from price changes. Income earned from the carbon credit program does not fall into that category. The income received from the carbon credit program is not reported on Schedule F. Therefore, the Office of State Tax Commissioner recommends assessment officials consider income received from the carbon credit program as nonfarm income.

Skid Homes Are Not Mobile Homes

With the shortage of available housing in some of the oil and gas producing counties, companies have moved in temporary housing. The skid houses, or dog houses as they may be called, are structures that are similar to manufactured homes but without wheels. Structures have a large metal skid on the bottom, and they are winched onto a flatbed trailer for transport. The structures are not placed on foundations or attached to the ground, although they may have some skirting around the structure. The structures are approximately 16’ x 45’ in size and usually contain a small kitchen, bathroom and sleeping rooms.

The skid houses, or dog houses as they may be called, are structures that are similar to manufactured homes but without wheels.

N.D.C.C. § 57-55-01 defines a mobile home as a structure which is built on a permanent chassis, ordinarily designed for living quarters or a place of business, and is either attached to utility services or is 27 or more feet in length. North Dakota law does not define "permanent chassis." Federal regulations for the U.S. Department of Housing and Urban Development defines "permanent chassis" for purposes of mobile or manufactured home construction and safety standards to mean "the entire transportation system comprising . . . drawbar and coupling mechanism, frame, running gears assembly, and lights." Additionally, the American Heritage Dictionary, Second College Edition, 1991, defines "chassis" to mean ". . . the rectangular steel frame, supported on springs and attached to the axles, that holds the body . . ."

Based on these sources, the Property Tax Division concludes that skid houses do not fit the statutory definition of a mobile home and therefore are not subject to mobile home taxation in North Dakota.

Land Use Maps Available on NRCS Website

Land usage is one of the three items that must be considered in determining agricultural land values.

Janet Cron, Burke County Tax Director, has obtained useful information and maps from the Natural Resources Conservation Service (NRCS). Maps are available on its web site http://datagateway.nrcs.usda.gov. The common land use (CLU) maps show the acreage used as cropland. Those maps can be intersected with the soils maps to identify and label the cropland from the noncropland in each soil polygon. This is done by drawing another layer that can easily be split or combined as the parcels change.

The land use maps can be downloaded from the NRCS web site to a personal computer. The files are very large and they are zipped. They need to be unzipped after downloading to one's computer. To be able to use the maps properly, assessment officials need to determine the extent and file format they want to use. Janet indicated the maps and information are very usable and helpful for discussions with commissioners and property owners. Assessment officials interested in obtaining more information from Janet may contact her by telephone at 701.377.2661 or by email at jcron@nd.gov.

The best source of information regarding sales transactions is the parties involved - the buyer and seller because they know the true motivating factors in a transaction.

Sale Verification Important and Necessary

Assessment officials receive sales information from many sources such as the county recorder, the State Board of Equalization, appraisers, realtors and property managers. The best source of information regarding sales transactions is the parties involved – the buyer and seller because they know the true motivating factors in a transaction.

For residential and commercial property, assessment officials need to determine whether the transaction is an arm's-length transaction and meets the criteria set out in the definition of market value. The International Association of Assessing Officers defines market value as:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus." Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;

4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

Following are some specific questions assessment officials should ask when verifying sales information.

1. Does this transaction meet the definition of market value? *(most important criterion)*
   - Most probable price (not highest, not lowest, not an average)
   - Expressed in terms of money (typical financing for the area and type of property)
   - Reasonable time for exposure to the market
   - Both buyer and seller are informed of the uses to which the property may be put
   - Arm's-length transaction in the open market
   - Willing buyer and willing seller, with no advantage being taken by either party
   - Recognizes present use as well as potential use of property

2. Is there any relationship between the buyer and seller?
   - Does not necessarily mean just relatives; could be some known association between buyer and seller
   - If there is an association between the buyer and seller, did it have an influence on the sale price?

3. How was the property marketed?
   - How long was the property on the market?
   - What was the asking price?
   - Were there any price reductions?

4. How was the asking price for the property established?
   - Appraisal
   - Checked around
   - Personal judgment
   - Other ___________________

5. In your opinion, was the sale price at, above, or below the parcel's market value?

6. In your opinion, if the property sold in today's market, would the most probable price be:
   - Less than the price reported?
   - More than the price reported?
   - Same as the price reported?

Assessment officials should take the time to examine sales transactions and especially the motives of the buyers and sellers. The sales prices are used to establish the market value of other residential and commercial properties that have not yet sold.

Legal Descriptions for Assessment Purposes

North Dakota Century Code § 57-02-38 specifies the maximum size of assessment parcels for taxation purposes. The statute provides that in all assessment books and tax lists, land not situated within the boundaries of an incorporated city must be described and assessed in subdivisions not exceeding quarter sections. Parcels of real property located within the platted portion of a city must be described and assessed separately as to each lot. The only exception to that rule pertains to situations in which a building or structure covers two or more contiguous lots or parcels owned by the same person. In this case, the tract upon which the building or structure is located must be assessed as one parcel. A block which has not been subdivided may be described and assessed as one parcel.

Parcels of real property located within the platted portion of a city must be described and assessed separately as to each lot.

County officials who combine legal descriptions for taxation purposes in order to have fewer assessment parcel numbers and therefore fewer statements may benefit the counties; however, they jeopardize property owners' rights. The purpose for limiting the maximum size of parcels is to protect property owners from foreclosure of tax lien. It is unlawful and unreasonable for county officials to describe and assess real property parcels in sizes larger than what is allowed in N.D.C.C. § 57-02-38. The Office of State Tax Commissioner recommends county auditors review the assessment list and make the necessary changes to comply with the statutory requirement.

Winter Workshop Scheduled in February

The North Dakota Association of Assessing Officers is sponsoring a Winter Workshop. It will be held at the Comfort Inn in Bismarck on February 21-22, 2008. The workshop is scheduled from 1:00-5:00 p.m. on Thursday, February 21st and from 8:00 a.m. until noon on Friday, February 22nd. Thursday's schedule includes presentations by representatives of each regional assessors' association pertaining to a topic of interest to assessment officials. Personnel from the Office of State Tax Commissioner will present information on Friday morning. No registration is necessary.

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